

Title 10
DEPARTMENT OF HEALTH AND MENTAL
HYGIENE

Subtitle 29 BOARD OF MORTICIANS AND FUNERAL DIRECTORS

10.29.11 Complaint Procedures

Authority: Health Occupations Article, §7-205(7)] §7-205(a), Annotated Code of Maryland

Notice of Proposed Action

[16-011-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01—.06 under **COMAR 10.29.11 Complaint Procedures**. This action was considered at a public meeting on October 14, 2015, notice of which was given by publication on the Board's website at <http://dhmh.maryland.gov/bom/SitePages/Home.aspx>, pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to:

- (1) Make clarifying changes to the regulations for consistency with statute and to correct statutory citations;
- (2) Define a certain term;
- (3) Streamline the complaint process to make it consistent with the goal of public protection;
- (4) Require that complaints received be recorded on a complaint log;
- (5) Allow complaints to be received by any means and to clarify those coming from Board members;
- (6) Require that a complaint that does not fall within the Board's jurisdiction, as determined by the Complaint Committee and affirmed by the Board, but falls within the jurisdiction of another agency should be referred to the appropriate agency; and
- (7) Require that if the Complaint Committee determines that a complaint does fall within the Board's jurisdiction, the Board shall open the complaint for investigation.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through February 8, 2016. A public hearing has not been scheduled.

.01 Scope.

This chapter applies to the handling of all complaints against licensees [before] of the State Board of Morticians and Funeral Directors.

.02 Definitions.

- A. (text unchanged)
- B. Terms Defined.
 - (1)—(3) (text unchanged)

(4) "Committee" means the [complaint committee] *Complaint Committee* of the Board, which includes at least one mortician member of the Board and at least one consumer member of the Board, and which is assisted by Board counsel provided by the Attorney General's Office and Board administrative personnel.

(5) "Complaint" means a report of a potential violation [of] *during the [practice] performance* of mortuary [science] *services* against an individual licensed by the Board.

(6) (text unchanged)

(7) "Confidential" means that neither the complaint nor resolution of it by the Board may be released to the public, including to the complainant, pursuant to [State Government Article, §10-617] *General Provisions Article, §4-333*, Annotated Code of Maryland.

(8) "Consent order" means a written agreement reached by the licensee and the Board as a result of a prehearing conference which sets forth the terms and conditions regarding the licensee's ability or inability to practice and is subject to release to the public, pursuant to [State Government Article, §10-617] *General Provisions Article, §4-333*, Annotated Code of Maryland.

(9)—(13) (text unchanged)

(14) "Letter of dismissal" means a letter from the Board advising the licensee that:

(a) (text unchanged)

(b) Violations [of the Act] were not found; and

(c) (text unchanged)

(15) (text unchanged)

(16) "Licensee" means an individual licensed by the Board of Morticians *and Funeral Directors* against whom a complaint has been filed.

(17) "*Mortuary services*" means any service provided to a decedent or their family that requires any license issued by the Board.

.03 Filing of Complaint.

A. [A complaint to the Board against a licensee shall be filed by the complainant on a form devised by the Board or in a letter addressed to the Board and mailed, sent by facsimile, or hand-delivered to the Board.] *A complaint may come to the Board by any means from the public or a Board member.*

[B. If the complaint to the Board against a licensee is filed in a letter form, the following information shall be included:

(1) Full name, address, and telephone number of complainant;

(2) Full name, address, and telephone number of the licensee against whom the complaint is being filed;

(3) Full name, address, and telephone number of each witness who should be contacted; and

(4) A detailed description of the nature of the complaint explaining what occurred, including dates and times]

B. A complaint received by the Board shall be recorded on a complaint log.

C. (text unchanged)

D. In an emergency situation the Board may act upon a complaint received by telephone if that complaint is followed up in writing [as specified in §A of this regulation].

E. The Board may also act upon a complaint [of] *signed* by a Board member if the complaint is recorded *on the log* and the Board member refrains from further participation in the discussion or vote in the matter.

.04 Disposition of Complaint by Complaint Committee.

A. Upon receipt of a complaint, the administrative personnel shall present the complaint to the [complaint committee] *Complaint Committee* of the Board.

B. (text unchanged)

C. If the Committee determines that the complaint does not fall within the Board's jurisdiction [because the complaint addresses activities not governed by the Act], the determination [is] *shall be* reported to the Board at its next regularly scheduled Board meeting. If the Board concurs with the recommendation of the Committee, the Board shall [notify the complainant and licensee in writing within 2 weeks of the Board's meeting] *vote to close the complaint with no Board action.*

D. If the Board determines that the complaint falls under the jurisdiction of another agency, the Board staff shall refer the complaint to the appropriate agency.

[D.] *E. If the Committee determines that the complaint [falls] would fall* within the Board's jurisdiction, [it may authorize that an investigation of the complaint be undertaken by sending a copy of the complaint to the licensee requesting a written response within 2 weeks which is to include the records, files, contracts, and other documents of the transaction. The Board may also instruct an investigator, as an agent of the Board, to conduct an investigation by issuing subpoenas, and conducting interviews with the licensee, the complainant, and other pertinent witnesses] *the Board shall vote to open the complaint for investigation.*

[E.] *F. (text unchanged)*

[F.] *G. (text unchanged)*

.05 Board Action on Complaints.

A.—D. (text unchanged)

E. In addition, following the Board's vote, the Board shall issue a written document regarding the action taken. All of these documents will be sent to the licensee. The Board shall notify the complainant of the resolution of the complaint, as permitted by [State Government Article, §10-617] *General Provisions Article, §4-333*, Annotated Code of Maryland.

.06 Confidentiality.

A. (text unchanged)

B. An educational letter *and a letter of admonishment* is treated as a confidential record maintained by the Board on the licensee.

VAN T. MITCHELL
Secretary of Health and Mental Hygiene